BRIEF OF PETITIONER CITING CASES BELIEVED TO BE CONTROLLING.

Jurisdictional Points.

POINT 2.

The interest of a trial judge in pending litigation disqualifies him and the matter is *coram non judice*.

State ex rel. v. *Smith*, 176 Mo. 90, 91.

POINT 6.

A finding without evidence is inconsistent with justice and an exercise of arbitrary power.

Interstate Commerce Commission v. *Louisville and Nashville Ry. Co.*, 227 U. S. 88.

POINT 7.

That property rights may not be arbitrarily invaded under the guise of police power.

Dobbins v. *Los Angeles*, 195 U. S. 223, 236, 25 S. Ct. 18.

Holden v. *Hardy*, 169 U. S. 336, 398.

McLean v. *Arkansas*, 211 U. S. 539, 547.

Lawton v. *Steele*, 211 U. S. 137.

Meyer v. *Nebraska*, *infra*.

POINT 8.

The liberty and property of a citizen must be protected by rudimentary requirements of fair play.

Morgan v. *U. S.*, 304 U. S. 1, 14, 58 S. Ct. 773.

Ohio Bell Telephone Co. v. *Public Utilities Commission*, 301 U. S. 292, 300, 57 S. Ct. 724.

Tumey v. *Ohio*, 273 U. S. 510.

POINT 9.

The right to labor at a lawful occupation of one's own choosing and the good will derived therefrom constitute both liberty and property.

Allgeyer v. *State of Louisiana*, 165 U. S. 578-590-17 S. Ct. 431.

The Slaughter House Cases, 16 Wall. 36, 21 L. Ed. 394.

Ex parte Virginia, 100 U. S. 339.

Meyer v. *Nebraska*, 262 U. S. 390, 399.

POINT 10.

That no right granted or secured by the Constitution can be impaired or destroyed by State enactment, whatever may be the source from which the power to pass such enactment may be derived.

Connolly v. *Union Sewer Pipe Co.*, 184 U. S. 540, 558.

The judicial branch of government may not be elevated over the legislative branch and may not be given powers limited merely by its own discretion.

Cary v. *Curtis*, 44 U. S. 236, 11 L. Ed. 576.

Points of Law.

POINT 2.

The attempt to try alleged direct contemns alleged committed in forums other than the trial Court an *ex parte* procedure within the Court chambers behind closed doors, from evidence not of record compiled by agents of the Court acting as prosecutors at the same time and instant and to render a decree thereon is violative of all organic and statutory law.

Ex parte Bradley, 7 Wall. (U. S.) 364.

Ex parte Robinson, 19 Wall. (86 U. S.) 505.

In re Debbs, 158 U. S. 564, 565, 595.
Durham v. *United States*, 289 Fed. 76.
State ex inf. v. *Sheppard*, 177 Mo. 205, 237.
State ex rel. Houghey et al. v. *Ryan, Judge Garver et al.*, 182 Mo. 349, 355.
Ex parte LeMond, 295 Mo. 586, 245 S. W. 1057.
In re Neville et al., 117 Fed. 448, 452.
Rapalje on Contempt, Par. 13, p. 15.
Morgan v. *U. S., supra.*

POINT 3.

The right to a fair and impartial hearing is an inherent right protected by the inhibitions of the Fourteenth Amendment and that Judges may not extend their activties to become assistant prosecutors.

Goldstein v. *U. S.*, 63 F. 2d 609-613.
Sunderland v. *U. S.*, 19 F. 2d 203-216.
Tumey v. *Ohio*, 273 U. S. 510-535.

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Among the outstanding cases in the long line holding that the right to follow a chosen occupation comprised both liberty and property and falls within the inhibitions of the Fourteenth Amendment to the Constitution are, *Ex parte Virginia*, 100 U. S. 339, the *Slaughterhouse cases*, 16 Wall. 36, and *Allgeyer* v. *Louisiana*, 165 U. S. 578, 590.

Such authority as this is fundamentally unquestioned.

As to a fair trial this and other Courts have consistently held that this is essentially imperative to the effectuation of justice.

In *Tumey* v. *Ohio*, 273 U. S. 510, 535, this Court held

> "no matter what the evidence was against him he had the right to an impartial judge."

The Court further held in this same case that the necessary factors of a fair trial are an adequate hearing

and an impartial tribunal free from any interest or prejudice.

Such rights cannot be lawfully abrogated by an appellate Court nor by findings based upon conclusions unsupported by the rolls and the record.

In the case of *Interstate Commerce Commission* v. *Louisville and Nashville Ry. Co.*, 227 U. S. 88, this Court held that a finding without evidence would be inconsistent with justice and an exercise of arbitrary power.

This is in the nature of a special decree which deprives petitioner of the equal protection of the laws.

In the matter of venue the Missouri Supreme Court has more than once held that a trial judge cannot pass upon his own qualifications under an affidavit for a change of venue upon a fair trial.

Thompson v. *Sanders*, 334 Mo. 1100-1105, 70 S. W. 2d 1052.

In *State ex rel. Scott* v. *Smith*, 176 Mo. 90, 106, it was held that an affidavit in due form disqualifying the trial judge was conclusive.

In this later case it was also held that an appellate Court has no jurisdiction to try a case *de novo* without the exhibition of claims and the service of process.

With regard to the exercise of the police power of the State, petitioner's contention that the exercise of such is an attempt to arbitrarily regiment the Bar of Missouri and the United States, is subject to the inhibitions of organic and Constitutional law and that to authorize its exertion there must be a public interest involved.

In the long unbroken line of cases supporting this contention are *Lawton* v. *Steele*, 152 U. S. 133, 136-7, 14 S. Ct. 499, it was held

> "in order to justify the state in interposing its authority on behalf of the public, it must appear,

First, that the interests of the public generally as distinguished from those of a particular class, require such interference.

Second, that the means are reasonably necessary for the accomplishment of the purpose and are not unreasonably oppressive on individuals."

Also in *Meyer* v. *Nebraska,* 262 U. S. 390, 399, this Court held:

"The exercise of police power can be justified only when it adds in a substantial way to the security of fundamental rights."

In *McLean* v. *Arkansas,* 211 U. S. 539, l. c. 547, it was held:

"It is also true that the police power of the State is not unlimited, and subjected to judicial review and when exerted in an arbitrary and oppressive manner such laws may be annulled as violative of the rights protected by the Constitution."

All these and others support the contention that such police power cannot be exerted on behalf or in the interest of a class or of a few lawyers.

In *Connolly* v. *Union Sewer Pipe Co.,* 184 U. S. 540, l. c. 548, this Court held that no right granted or secured by the Constitution can be destroyed or impaired by State enactment, whatever may be the source from which the power to pass such enactment may be derived.

In opposition to the proposition of trying alleged direct contemns *de novo,* upon hearsay extrinsic evidence dehors the record, by indirect means under the guise of a disbarment procedure, while in all probability no Court has ever gone to such extremes as in the present case there is ample authority in support of petitioner's contentions. Among the outstanding cases are, *Ex parte Bradley,* 7 Wall. 364; *Ex parte Robinson,* 19 Wall. 505; *In re*

Debbs, 158 U. S. 564-5, 595; *State ex inf.* v. *Sheppard*, 177 Mo. 205, 237; *State ex rel. Houghey et al.* v. *Ryan, Judge Garver et al.*, 182 Mo. 349, 355.

The gist of authority is, that direct contemns are triable in a summary manner, at the time before the Court having jurisdiction of the parties and the subject matter.

Rapalje who is an unquestioned authority upon contempt clarifies the matter, if there was ever any doubt, in his work on Contempt, page 15, paragraph 13.

The rule has been established as far back as Blackstone, who in his commentaries calls attention to the fundamental principles then in existence regulating the subject.

To deviate from the established law and to legislate special laws upon the subject by judicial edict is to override organic law arbitrarily, to cause consternation and impel fear and uncertainty in the minds of the Bar, both State and Federal, to deny due process of law and the equal protection of the law and to invade the inhibitions of the Fourteenth Amendment and the innate rights of petitioner.

While sometimes Courts have attempted to legislate themselves into a position by judicial edict, to justify the arbitrary abuse of power in disbarment procedure, nevertheless the fundamental law remains unchanged.

The Courts are scarcely in a position to legislate or delegate themselves unauthorized powers never given them originally, and then to pass upon the facts and the law as to their own jurisdiction.

In *Pleasants* v. *United States*, the Court held, 305 U. S. 582, that a Court may not legislate by construction.

Such a question involves a delicate situation and eradicates the line of demarcation between justice and autocratic dictatorship.

The methods used in the procurement of the judgment and decree inaugurates special laws, overrides existing organic law and invades individual rights.

Here is an instance where he agents of the Court solicit claims against petitioner and then act as prosecutors in the cause, while their principal sits in judgment upon the facts and the law and proceeds to pass upon extrinsic evidence dehors the record at an *ex parte* procedure.

It is difficult to find a situation directly in point and petitoner believes that he is the first to have the courage to assert the rights of the Bar in opposition to the abuse of arbitrary power on the part of a Court, with the result that he has been subjected to public abuse and reprisals by the political appointees of the Court.

It is manifest upon the records that petitioner was tried, if at all, upon a special law inaugurated to fit the occasion, before a tribunal acting as prosecutor and judge concurrently, upon extrinsic evidence dehors the record and penalized although no violation of the laws was alleged or proven nor were his client's rights or property invaded.

The judgment was for the benefit of a few lawyers wherein no public interest was involved. It was arbitrary and despotic.

Petitioner's pleadings and defense was arbitrarily stricken from the files and the appellate Court undertook to exercise original jurisdiction, and to suppress the record which prevented a proper review before the Courts of the United States, in a manner not provided by law and in conflict with the innate rights of petitioner and Constitutional inhibitions protecting the same.

ARGUMENT.

This is a momentous decision affecting not only the rights, liberty, property and franchises of petitioner but stands out as an implied threat, which impels fear and uncertainty into the minds of the Bar of Missouri and the United States and imperils the vested rights of all litigants dependent upon the Bar for representation before the Courts of the land.

It subjects any lawyer who loses a suit to the harassment of a political inquisitional committee composed of his competitors, without the benefit of any statute of limitation or any adequate means to protect him from the whims and caprice of those dominated by outside influences or motivated by ulterior purposes.

Among other errors the appellate Court has attempted to legislate itself into a position whereby it might exercise original jurisdiction without the exhibition of claims and the service of process, all of which is in excess of its authorized powers and Constitutional authority.

The creation of a commission composed of political appointees of the Court comprising competitors of petitioner, acting in a dual capacity as officers of the Court and prosecutors of the cause concurrently, the alleged trial before an interested judge and a material witness, the further trial *de novo* by the appellate Court in an *ex parte* proceeding, upon extrinsic evidence dehors the record compiled by its own agents, the findings and decree unsupported by the rolls and the record proper, all have combined to deprive petitioner of his property, liberty, franchises and good will without due process of law.

Undoubtedly the Missouri Court exceeded its jurisdiction in rendering such a decision wherein no violation

of the law was charged or proven against petitioner.

This political bureaucratic superstructure so organized has superseded the Courts, both State and Federal and destroyed the very purpose for which the Courts were organized.

This Honorable Court should take judicial notice of the inefficient, unbusinesslike and impracticable method of delegating the control of the vast funds taxed against and collected from the Bar of Missouri and the United States, wherein disbursements aggregating one hundred fifty thousand dollars have been effected in the disbarment of some twelve or fifteen lawyers and wherein no prosecuting lawyer has received an authorized fee for his services.

The tremendous power resultant from the control of this enormous fund stands out as an obstacle in the path of justice and has impaired the vested rights not only of petitioner but of other members of the Bar of the State of Missouri and the United States and to the extent that a fair trial and hearing are impossible in the State of Missouri.

The real purpose for the exercise of the police power of the State of Missouri, namely the protection of the rights of the public, has been lost sight of in the controversy among lawyers.

Petitioner contends that the wave of regimentation which is sweeping over the land is climaxed in this decision involving the freedom of the Courts, the freedom of speech and the right to follow a lawful occupation free from harassment, intimidation, domination and oppression by a clique of practicing lawyers.

The Missouri Supreme Court committed further error and exceeded its jurisdiction in rendering a decision, the findings of which are either unsupported by the rolls and the record or impeached thereby.

The decree and findings comprise a special judgment which is for the benefit of a few lawyers and by its apparent partiality and prejudice has not only deprived petitioner of a fair trial and due process of law but has also deprived him of the equal protection of the laws in violation of the inhibitions of the Fourteenth Amendment to the Constitution.

In finality the rights, liberty and property of petitioner's clients whom he sought to protect from the depredations of a few lawyers have become submerged and ignored by a commission not amenable to any authority, which supersedes the Courts of Missouri and the United States and in the further attempt to uphold the dignity of the inferior Courts by indirect means, in a manner exceeding the jurisdiction of the appellate Court, when such Courts have inherent power to protect themselves.

The decision and the manner of its procurement are apparently without parallel or precedent in the judicial history of the land.

There was nothing fair about the whole procedure which amounted to the confiscation of the property, rights and franchises of petitioner without due process of law and deprived petitioner of the equal protection of the laws.

The reasons why this Court should exercise its jurisdiction are patent upon the face of the record and too obvious to be denied.

Respectfully submitted,

WALTER A. LEIMER,

Petitioner.